

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>September 19, 2007</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2006-37-C</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>		

SUBJECT:

DOCKET NO. 2006-37-C - Petition of the Office of Regulatory Staff for a Rule-Making Proceeding to Examine the Requirements and Standards to Be Used by the Commission When Evaluating Applications for Eligible Telecommunications Carrier (ETC) Status and When Making Annual Certification of ETC Compliance to the Federal Communications Commission – A Hearing was Held in June 2007 – Discuss this Matter with the Commission.

COMMISSION ACTION:

Mr. Chairman, I have a two part motion. First, I move that the written report that is required under Section 1-23-111 of the South Carolina Code be issued with regard to proposed regulation 103-690, Designation of Eligible Telecommunications Carriers. I further move that the report find that there is a need for certain changes to the proposed regulation as discussed at the June 26, 2007 hearing, and that the changes are reasonable.

Mr. Chairman, you and the other members of the Commission have been furnished with a document outlining the proposed changes to the original regulation, which were provided by a number of the stakeholders, and I would ask that this document constitute a part of this motion. In summary, the Purpose section is being modified to include provisions describing the Federal Universal Service Fund and recognition of the fact that applicants for ETC status will recognize this Commission's authority and jurisdiction to impose regulations on ETCs. The Requirements section is being changed to provide more specificity as to what is to be submitted to this Commission for consideration in original certification proceedings. One of the new requirements, for example, is that the applicant must furnish a detailed map of the coverage area before and after the improvements, and, in the case of a CMRS provider, a map identifying existing and proposed tower site locations. Another new requirement is that the applicant must show the specific geographic areas where the improvements will be made.

In any event, Mr. Chairman, I move that we promulgate the proposed modified ETC regulations on designation as shown in the relevant document, and submit this to the General Assembly for approval.

Further, Mr. Chairman, as to the second part of my motion, all members of the Commission have been furnished with a new proposed regulation on annual ETC reporting requirements. I would also ask that this document constitute a part of this motion. This regulation is divided into two parts. The first part is to state annual reporting requirements for ETCs designated after January 1, 2007. This section requires that certain detailed information be furnished on an annual basis. The second part consists of annual reporting requirements for ETCs designated prior to January 1, 2007. This part requires less detailed information. Mr. Chairman, I move that we instruct Staff to proceed with processing the new proposed regulation on annual reporting requirements for ETCs as per the requirements of the South Carolina Administrative Procedures Act.

PRESIDING	<u>Hamilton</u>				Session:	Regular
	MOTION	YES	NO	OTHER	Time of Session	<u>2:30 PM</u>
CLYBURN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		APPROVED	<u> </u>
FLEMING	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		APPROVED STC 30 DAYS	<u> </u>
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		ACCEPTED FOR FILING	<u> </u>
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		DENIED	<u> </u>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		AMENDED	<u> </u>
MOSELEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		TRANSFERRED	<u> </u>
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SUSPENDED	<u> </u>
					CANCELED	<u> </u>
					SET FOR HEARING	<u> </u>
					ADVISED	<u> </u>
					CARRIED OVER	<u> </u>
					RECORDED BY	<u>SCHMIEDING</u>

103-690. Designation of Eligible Telecommunications Carriers

A. Purpose.

1. This regulation defines the requirements for designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving federal universal service support, not state universal service support, pursuant to 47 U.S.C. § 214(e) of the Federal Telecommunications Act of 1996.

2. This regulation will ensure that the Commission will only grant a particular application if doing so will further the goals and purposes of the federal high-cost universal service fund and the universal service fund provisions of Section 254 of the Telecommunications Act of 1996. Specifically, that consumers in all regions of South Carolina, including those in rural, insular and high-cost areas will have access to telecommunications services comparable to those in urban areas of the state.

3. Notwithstanding the ETC applicant's regulatory status or the Commission's jurisdiction over the applicant's regular operations, in seeking designation as an ETC, the applicant acknowledges the Commission's authority and jurisdiction to impose such regulations on ETCs, including the applicant, as are in the public interest.

B. Definitions.

1. Cell Site. A geographic location where antennae and electronic communications equipment are placed to create a cell in a cellular network for the use of mobile phones. A cell site is composed of a tower or other elevated structure for mounting antennae, and one or more sets of transmitter/receivers, transceivers, digital signal processors, control electronics, and backup electrical power sources and sheltering.

2. Commission. The word Commission in this regulation means the Public Service Commission of South Carolina.

3. Eligible Telecommunications Carrier (ETC). An ETC is a carrier as defined in 47 U.S.C. §214(e).

4. Lifeline Service. Lifeline Service is a service as defined in 47 C.F.R. §54.401.

5. Link Up Service. Link Up Service is a service as defined in 47 C.F.R. §54.411.

6. ORS. The abbreviation ORS in this regulation means the Office of Regulatory Staff.

7. Wire Center. A geographic location of one or more local switching systems; a location where customer loops converge. References to the evaluation of service within a wire center, for purposes of this regulation, shall mean an evaluation of the quality of the services provided in that part of the licensees' service area served by a cell site in the event the applicant is a wireless service provider.

C. Requirements for initial designation as an Eligible Telecommunications Carrier.

(a)The Commission may upon its own motion or upon request, designate a common carrier that meets the requirements in this section, and the public interest standard set forth in subsection (b) of this section, as an ETC for a designated service area. ETCs shall offer services in compliance with 47 C.F.R. §54.101. Upon request and consistent with the public interest, convenience and necessity, the Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission. Before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest. On or after the effective date of this rule, in order to be designated an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act of 1996, any common carrier in its application filed with the Commission and a copy provided to the ORS must provide the following information:

(1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside

its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(B) submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis, or on a cell site-by-cell site basis if the applicant is a wireless carrier throughout its proposed designated service area. Each applicant shall demonstrate:

1. How it plans to expand its network to ensure that unserved and underserved rural or high-cost areas will receive sufficient signal quality, that coverage or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;

2. A detailed map of the coverage area before and after the improvements and in the case of a CMRS provider, a map identifying existing and proposed tower site locations;

3. The specific geographic areas where the improvements will be made;

4. The projected start date and completion date for each improvement;

5. The estimated amount of investment for each project that is funded by high-cost support;

6. A statement as to how all of the facilities funded by high-cost support are eligible for such support;

7. The estimated population that will be served as a result of the improvements;

8. If an applicant believes that service improvements in a particular wire center or on a particular cell site are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

9. A statement as to how the proposed improvements funded by universal service dollars would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur.

(C) for carriers seeking certification in areas not eligible for High Cost Support from the USF, but seeking ETC designation for the purpose of

participation in the Lifeline and Link Up programs, the following shall apply in lieu of paragraph (B) above: shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link Up programs. All other provisions of this subsection shall apply.

(2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, its ability to reroute traffic around damaged facilities, and its capability of managing traffic spikes resulting from emergency situations. The Commission shall determine on a case-by-case basis whether a carrier has demonstrated its ability to remain functional in emergency situations.

(3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) certify by affidavit signed by an officer of the company that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(6) certify by affidavit signed by an officer of the company that it does offer or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services.

(7) certify by affidavit signed by an officer of the company that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

(b) *Public Interest Standard.* Prior to designating an eligible

telecommunications carrier pursuant to 47 U.S.C. § 214(e)(2), the Commission must determine that such designation is in the public interest. In doing so, the Commission shall consider, *inter alia*, the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that includes, but is not limited to, comparing the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. ~~The Commission will deny designation if it concludes that the potential for creamskimming exists.~~ The Commission shall not designate a service area to an ETC that is smaller than an entire wire center.

103-690.1. Annual Reporting Requirements for Designated Eligible Telecommunications Carriers

A. Purpose. The purpose of this regulation is to specify the annual reporting requirements for designated Eligible Telecommunications Carriers (ETCs).

B. Annual Reporting Requirements for ETCs Designated after January 1, 2007. This section shall apply to all eligible telecommunications carriers who are designated after January 1, 2007.

- (a) *Filing Deadlines.* For ETCs who are designated after January 1, 2007, in order for the common carrier designated under 47 U.S.C. § 214(e)(2) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must file with the Commission and provide a copy to the ORS the annual reporting information in paragraph (b) no later than August 1, 2008, and thereafter annually by August 1st of each year. The information provided should cover the previous twelve (12) month period ending ~~December 31st June 30th~~. The ORS shall review each ETC annual report and notify the Commission on or before August 20th annually in writing as to the ORS's opinion as to whether the carrier is in compliance with federal and state regulations and rules. The Commission, after holding a hearing, if it deems a hearing is necessary, shall determine based upon the information provided to it whether the carrier is in compliance with federal and state regulations and rules and shall notify the Federal Communications Commission and the Universal Service Administrative Company of each company's compliance by October 1 of the reporting year thereby ensuring that each ETC designated by the Commission is authorized to receive federal support for the upcoming fiscal year.

Reports must also contain a commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service as of May 18, 2008, or a commitment by other ETCs that they meet the service quality standards outlined in Section 103-663. In addition, ETCs not regulated by the Commission must report on the following regulations: 103-618A – Trouble Reports per hundred access lines; 103-619 (a) & (e) – Held Applications/Availability of Service; 103-661 (c) – Interruption of Service. For the purpose of this regulation, access lines and handsets shall be used interchangeably.

- (b) A common carrier designated under 47 U.S.C. § 214(e)(2) as an eligible telecommunications carrier after January 1, 2007 shall provide:

- (1) a progress report on its two-year service quality improvement plan, including maps detailing its progress toward meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding

any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level. Additionally, an updated forward-looking two-year plan shall be filed annually;

- (2) detailed information on any outage, as defined in 47C.F.R. §4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. §4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected;
- (3) the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints or trouble reports per 1000 handsets or access lines;
- (5) certification that it is complying with applicable service quality standards and consumer protection rules, as designated by the Commission;
- (6) a detailed report and certification that the carrier is able to function in emergency situations;
- (7) for non-incumbent local exchange carriers certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas;
- (8) certification that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area;

- (9) the number of Lifeline customers and the number of customers that received Link Up assistance as of Dec 31st of the prior year; and
- (10) copies of responses to the Lifeline Verification Survey or Certification filed with the Universal Service Administrative Company on August 31 of each year.
- (11) For ETCs not eligible for High Cost Fund support, but participating in the Lifeline and Link UP programs subsections (1) and (2) shall be waived. All other requirements shall remain in force, except that the requirements of (6) may be met by reference to an underlying carrier's continuing certification as for leased facilities.

C. Annual Reporting Requirements for ETCs Designated Prior to January 1, 2007.

ETCs who were designated prior to January 1, 2007, must certify to the Commission that the funds they received from the federal Universal Service Fund during the previous year were used in accordance with federal statutes, rules and guidelines. Additionally, these ETCs must certify that they are in good standing with the Universal Service Administrative Company and the Federal Communications Commission regarding the prior year's support and audit. This certification must be filed with the Commission on or before August 1st annually.

D. Newly Designated Eligible Telecommunications Carriers.

- (a) Once a carrier is designated as eligible to receive support the Commission shall file the certification with the Federal Communications Commission and the Universal Service Administrative Company within 60 days of that effective date of its designation as an eligible telecommunications carrier.
- (b) Thereafter, the ETC must submit the data required in paragraph B by August 1st of each year to the Commission and the Commission shall file the certification with the Federal Communications Commission and the Universal Service Administrative Company by October 1.

E. ETC Requirements for Lifeline and Link Up Services

- (a) ETCs shall offer Lifeline service in the designated service area to all qualifying low-income consumers in accordance with the federal lifeline service guidelines as follows:
 - (1) ETCs shall advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

- (2) ETCs shall commit to offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation service, that service becomes part of that consumer's Lifeline service.
 - (3) ETCs may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll limitation service from the carrier where available.
 - (4) ETCs shall verify annually that its Lifeline customers meet the program qualification.
 - (5) ETCs shall notify Lifeline subscribers a minimum of 60 days prior to termination of their service if the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline qualifying criteria.
 - (6) ETCs shall not charge Lifeline customers a monthly number- portability charge.
- (b) ETCs shall offer Linkup service in the designated service area to all qualifying low-income consumers, in accordance with the following guideline:
- (1) ETCs shall advertise availability of Link Up service in a manner reasonably designed to reach those likely to qualify for the service, and shall provide a reduction of the customary charge for connecting telecommunications service for a single line at the consumer's principle place of residence. The reduction shall be in conformance with federal regulations governing the cost of Link Up service.